

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VOLM COMPANIES, INCORPORATED,)
et al.,)

Plaintiffs,)

v.)

Case No. 4:22 CV 373 CDP

MARK' ANDY, INC.,)

Defendant.)

MEMORANDUM AND ORDER

Defendant Mark' Andy, Inc., moves to compel plaintiffs to provide complete answers to seventeen interrogatories and complete responses to five requests for production of documents. Plaintiffs oppose the motion. In its reply to plaintiffs' opposition, defendant narrows its motion to six interrogatories but continues to seek complete responses to the five document requests. I held a hearing on the motion on April 5, 2023, at which counsel for both sides argued their respective positions. For the reasons stated on the record at that hearing, I will grant defendant's motion to compel in part and order plaintiffs to fully answer Interrogatory Nos. 2, 8, 9, 17, 19, and 20 and to fully respond to Document Request Nos. 25, 26, 27, and 28. I will also order plaintiffs to complete its ongoing document production. I will deny without prejudice defendant's motion to compel directed to Document Request No. 31.

I will also order counsel to meet and confer for the purpose of preparing and filing a Joint Scheduling Plan that includes a proposed schedule governing the remaining proceedings in this case, including mediation and trial. I will hold a telephone scheduling conference with counsel after they submit the Plan.

Finally, because I am granting in part and denying in part the defendant's motion to compel, I am not required under Rule 37(a)(5) to order plaintiffs to pay defendant's attorney's fees and expenses in bringing the motion. *See* Fed. R. Civ. P. 37(a)(5)(C) (court "*may* . . . apportion the reasonable expenses for the motion.") (emphasis added); *Smith v. City of St. Charles, Mo.*, No. 4:21 CV 93 RWS, 2022 WL 13689527, at *1 (E.D. Mo. Oct. 21, 2022) (because language of Rule 37(a)(5)(C) is permissive, court can decline request for attorney's fees). I will deny defendant's request for attorney's fees at this time. However, if plaintiffs continue in their evasive and noncompliant conduct, thus requiring defendant to file another motion to compel, an award of attorney's fees on that motion may be warranted.

Accordingly,

IT IS HEREBY ORDERED that defendant Mark' Andy, Inc.'s Motion to Compel Interrogatory and Requests for Production Responses [59] is **GRANTED** in part and **DENIED** without prejudice in part.

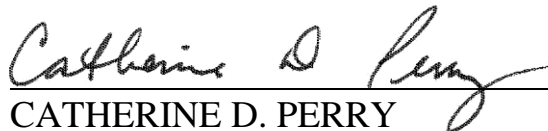
IT IS FURTHER ORDERED that not later than **April 21, 2023**, plaintiffs

shall: 1) provide to defendant full and complete answers to all parts of Interrogatory Nos. 2, 8, 9, 17, 19, and 20; 2) make full and complete production to defendant of all documents and serve an amended response to Document Request Nos. 25, 26, 27, and 28; and 3) complete their ongoing document production as agreed to by the parties.

IT IS FURTHER ORDERED that not later than **April 28, 2023**, counsel shall meet and confer and file with the Court a Joint Scheduling Plan with a proposed schedule to govern the remaining proceedings in this case, including mediation and trial.

IT IS FURTHER ORDERED that I will hold a **telephone scheduling conference** with counsel on **Wednesday, May 3, 2023 at 3:00 p.m.** to discuss the matters addressed in their Joint Scheduling Plan and to select a new trial date.

Counsel should dial 888-684-8852, then when prompted enter access code: 4362059.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 6th day of April, 2023.